amount of the interbank deposits as reported for 1942, but were tabulated separately.[6]

This suit involves reciprocal accounts—not interbank deposits generally. The portions of the report referred to with the statistical data supporting it show that FDIC's own statisticians and board of directors have actually followed the action of the Federal Reserve Board and the Comptroller in 1942 in determining for each insured bank the "liability of the bank for deposits" by excluding reciprocal accounts[7] (FDIC 1942 Annual Report pp. 8-9 and pp. 80-1).

3. Petitioner attempts (Pet. p. 13) to create an issue of importance out of the remark of the court below that:

> "The Federal Reserve Bank, like plaintiff, was an agency of the Federal Reserve System" (Pet. App. p. 43).

Whether or not FDIC is an "agency" of the Federal Reserve System, there is plainly a close relationship. The Federal Deposit Insurance Act was originally a part of the Federal Reserve Act Sec. 12 B (48 Stat. 168). The Federal Reserve Banks were required to and did furnish nearly one-half of the original capital of the FDIC (48 Stat. 169). And the Comptroller of the Currency is one of the three members of the Board governing the FDIC (48 Stat. 168). The court below was merely saying that the practices of these other agencies operating in the same field were relevant in construing the Federal Deposit Insurance Act. This dictum can hardly have the horrendous

6. Beginning in 1942 "interbank deposits" was used to characterize ordinary deposits by one bank with another, but excluding reciprocal amounts from both deposits on the liability side and from the cash balances with other banks on the asset side.

7. "Since June 30, 1942, demand balances with and demand deposits due to banks in the United States, except private banks, and American branches of foreign banks, exclude reciprocal interbank deposits." (FDIC 1951 Ann. Report, p. 141.)

consequences which petitioner suggests or create an important federal question.

Likewise in the instant case it is necessary to consider the Federal Deposit Insurance Act in its full legislative setting and in the light of the action taken by the Comptroller and by the Federal Reserve Board. Petitioner insists, however, that such action is not at all pertinent and not binding on it. In so doing, it overlooks the well-settled rule of statutory construction that other statutes dealing with the same subject matter are in *pari materia*, and that, therefore, the Federal Deposit Insurance Act must be construed together with other federal legislation dealing with banks. (*Merrill* v. *Fahs*, 324 U. S. 308, 313; *U. S. Navigation Co.* v. *Cunard S.S. Co.*, 284 U. S. 474, 481; *Brotherhood of R. R. Trainmen* v. *C. R. & I. R. Co.*, 353 U. S. 30, 40.)

It would seem absurd to require respondent in computing its deposit liabilities as directed by the Comptroller of the Currency and in compliance with the Federal Reserve directives to use one method and in computing its liability for deposits for the purpose of fixing the assessment base to use another. To do so would "impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none." *Keifer & Keifer* v. *U. S.*, 306 U. S. 381, 394.

4. It is also argued (Pet. 11) that the decision of the 5th Circuit in *Constitution Indemnity Co.* v. *Shytles*, 47 F. 2d 441 (1931) conflicts in principle with the decision below. That was a decision construing a Workmen's Compensation Insurance policy, and has nothing to do with the present problem.

II.

Deductions of Uncollected Cash Items.

Facts.

FDIC seeks to recover approximately $64,000 as an additional assessment based on the inclusion of uncollected cash items which the respondent deducted from the deposits which constituted the assessment base. Under the 1950 Act, the assessments are based on the average of the assessment base for the days March 31, June 30, September 30 and December 31 (U. S. C. A. § 1817(2), Pet. App. pp. 35-6). The controversy relates to the method of computing the deductions for "float" items, the uncollected checks on out-of-town banks, when the base days fall on Monday.

Most banks are closed on weekends, so that as to them the "float" problem on a Monday base day is no different from that on any other. But respondent has so large an amount of weekend "float" items that it maintains a staff to start the processing of such items between the close of business Fridays and the opening of business Mondays (J. A. 17). Many of the items were received after the close of business on the preceding Friday, were forwarded for collection on Saturday or Sunday (although the bank was officially closed on those days), preceding the Monday base day but remained uncollected on Monday, when they were credited conditionally (J. A. 17). A second category was received after the close of business on the Friday preceding the Monday base calendar day, credited conditionally on the base day, and forwarded for collection on that day (J. A. 18). The items in the remaining category were received and credited conditionally on the base day, but were not completely processed and forwarded until the next day (J. A. 18) because of the enormous number of items handled by respondent (J. A. 110-11).

If the respondent had permitted the "float" items to accumulate from Friday to Monday before forwarding them for collection, as do most banks, there would be no question as to their deductibility. As a matter of fact petitioner received at least $84,000 more by way of assessments from respondent than petitioner would have received had respondent waited until the Monday base days to forward the items. The sum which was paid to petitioner in open court by respondent (J. A. 60) represented items forwarded over the week-ends which had been collected by the base days. The question is whether respondent loses the right to deduct the first two categories of items because it forwards them over the weekend, though they are still uncollected on Monday, and whether it loses the right to deduct the third category of items which were credited on the base days but not completely processed or forwarded until the following day.

Argument.

1. By its regulations effective March 30, 1954, FDIC has construed "base day" as being "the period of time beginning with the time of the closing of the books of the bank on the last business day immediately preceding the assessment base day to the time of the closing of the books of the bank on the base day according to the normal practice of the bank. Holidays and other nonbusiness days intervening between the preceding business day and the base day are a part of the base day". Items are deemed to have been forwarded when they are "in the process of forwarding in accordance with normal procedure of the bank, even though the item may be in the possession of the bank at the time of the closing of the books on the base day" (Sections 327.1(a), and 327.1(f) 12 C. F. R. §§ 327.1(a), 327.1(f) (Supp. 1955) quoted in Pet. App. 47). Concededly, re-

spondent's deductions are in accordance with this interpretation of the Act, which no one questions. The issue thus relates to assessments for the period between 1950 and 1954, for FDIC is not attempting to assess these items for subsequent years. The proper interpretation of the Act before 1954 is, therefore, of no present general importance.

FDIC attempts to give the impression that the decision below might affect all of the $193,000,000,000 of insured deposits at the end of 1954 (Pet. p. 27). Obviously, only a minute portion of this total would ever have fitted into the narrow pattern of facts described above.

Moreover, unless others have not paid the amounts claimed, or have paid them under protest, they will not be entitled to rely upon the decision below. Counsel for petitioner stated on the record there were only ten banks which paid under protest and two which posted security but did not pay (J. A. 125). In its opening brief in the Court of Appeals, petitioner stated (pp. 11-12):

> "From the date of promulgation of the 1950 Regulation down to March 31, 1954, the date of its amendment, all insured banks throughout the country, except two banks which deposited security and asked that payment be deferred, have complied with the plaintiff's regulation and have deducted from deposits in figuring their assessment bases only uncollected cash items received and forwarded on the base day. (J. A. 80, 125.)"

Furthermore, the 5-year statute of limitations would bar suits for all but the base days between October 1952 and March 1954.

2. The 1950 Act gives a bank two options for deducting the so-called "float" items (12 USCA, § 1817(a)(1); Pet. App. p. 34). Respondent chose the "aa" method, which reads:

> "By multiplying by two the total of the cash items forwarded for collection on the assessment base days

(being the days on which the average deposits are computed) and cash items held for clearings at the close of business on said days, which are in the process of collection and which the bank has paid in the regular course of business or credited to deposit accounts."

Since the object of this deduction is to avoid charging the banks for items not collected, it is reasonable to construe the phrase "forwarded for collection" as covering items in the process of being forwarded on the day in question.

This is fully supported by the testimony given by Judge L. E. Birdzell, who had formerly been counsel for FDIC, when he stated that (1950 House Hearings on S. 2822, 81st Cong., 2d Sess., p. 112):

"* * * This bill simplifies that procedure by giving the banks an option to take a deduction from the assessment base of twice the amount of the cash items held for clearance or *forwarded for collection at the close of the business days* on which the deposit liabilities are computed for assessment purposes." (Italics ours.)

The fact that Judge Birdzell spoke of items "forwarded for collection at the close of the business days" clearly indicates his interpretation of the word "forwarded" as being used in the sense we urge; otherwise the words "at the close of the business days" would not make sense. His statement cannot be interpreted as construing this provision to require the actual forwarding of the items at the close of the business days. He was, therefore, obviously referring, as we do, to items in the status of having been forwarded or in the process of being forwarded.

To adopt the literal interpretation urged by petitioner would frustrate the intention of Congress to provide a simplified and fair method for the computation of assessments and to exclude uncollected items in determining the assess-

ment base. It is elementary, however, that courts are required to promote and give effect to the fullest reasonable extent, to the spirit of a statute even though contrary to its strict letter.

As the Court of Appeals said (Pet. App. 48):

> "If defendant had permitted the accumulation of all cash items between the time it closed its bank for business purposes on Friday until it opened on Monday (a base day) and had forwarded such items on that day, there could be no question as to their deductibility. To hold that they are not deductible because the bank, in keeping with efficiency and sound banking practices, maintained a force for the purpose of forwarding such items on Saturday and Sunday, is barren of any logic, as plaintiff's 1954 regulation appears to recognize."

Petitioner should not be allowed to penalize respondent for rendering prompt and efficient service to its customers. To accept the narrow view of base day and limit it to calendar day as suggested by petitioner would discourage efficient banking procedure.[8]

Petitioner argues that because the "aa" method allows a bank to double the amount of "float" items on the base day, it is improper to allow respondent to go beyond the base day strictly construed. It is urged that if respondent wished to deduct these items, it should have used the "bb" method.[9] Under the "aa" method banks are allowed to

8. This was in effect conceded by petitioner's chief witness, A. E. Anderson, FDIC Fiscal Agent, when he admitted in a speech in May 1956 that this construction under which the respective calendar days "from midnight to midnight constituted the base days" "brought about certain difficulties, which was unfortunate as this Amendatory Act was designed for simplification." 73 Banking L.J. 701, 705 (1956).

9. "By deducting the total of cash items forwarded for collection on the assessment base days and cash items held for clearings on the close of business on said days which are in the process of collection and which the bank has paid in the regular course of business or credited to deposit accounts plus uncollected items paid or credited on preceding days which are in the process of collection * * *." (12 U. S. C. A § 1817(a) (1).)

double the outstanding collection items on the theory that the average item is outstanding for collection for at least two bank days (J. A. 79). The "bb" method authorized the single deduction of items forwarded for collection on the base day and outstanding items paid or *credited on preceding days* (J. A. 17). Inasmuch as all of the items in question were credited on the calendar base day, they could not have been deducted under the "bb" method as they were not credited on preceding days.

If petitioner's interpretation is correct, respondent would be compelled to pay assessments, based on uncollected items which could not be drawn against, and were, therefore, not "money or its equivalent" as required by the statute (12 U. S. C. A. § 1813(l)).

Petitioner's original regulation in 1950 (§§ 327.1, 2) provided that items deducted under the "aa" method must be both received and forwarded on the base day (J. A. 181-184). The statute just says "forwarded," and nothing authorized the petitioner to add the requirement that the items also be received on that day. But that regulation was superseded in 1954, and its validity obviously does not present an issue important enough for this Court to review.

Petitioner contends that the court below gave the 1954 regulation retroactive effect, contrary to the intent of the FDIC. The court denied having done this (Pet. App. p. 48). It merely agreed that the construction of the statute embodied in the 1954 regulation was the correct one, and that the statute therefore had that meaning *ab initio* and said "If plaintiff had the authority in 1954 to interpret the statute as it did, we think a court has the authority to place a like interpretation upon the statute during the period from 1950 to 1954" (Pet. App. p. 48). The court was thus not giving effect to the regulation retroactively, but interpreting the statute for itself. As stated in *Manhattan Co. v. Commissioner*, 297 U. S. 129, relied on by the court

below (Pet. App. p. 48), "It is no more retroactive in its operation than is a judicial determination construing and applying a statute to a case in hand."

We submit that this interpretation is fair and reasonable, and that since it was adopted by petitioner in its own 1954 Regulations, it affords no ground for review.

III.

The "Contract Reserve" Account.

Facts.

Respondent and certain of its customers entered into agreements (J. A. 19) whereby respondent bought conditional sales contracts, which the customer had received for goods sold by it. The Bank paid its customer 90% of the face amount of the contracts. The customer made certain warranties with respect to its merchandise and the contracts and also assigned to the Bank, as security, title to the merchandise which the customer had retained. The customer was to collect the contracts as agent for the Bank. The remaining 10% of the amount due on the contracts was treated by the parties as a contract reserve and set up on the Bank's books as a liability. The 10% reserve was a further security to the Bank in the event the contracts proved uncollectible. The reserve was to be maintained at a certain level either out of the proceeds of further contracts to be purchased by the Bank or by retaining collections. Although the word "deposit" was used in the contract between the Bank and its customers, since the reserve was held as security no withdrawals were permitted and none was attempted to be made (J. A. 117-19).

Argument.

1. Up to 1950 there was no express statutory provision covering this point. In 1950 the statute was amended so as to permit banks to exclude from the assessment base, "cash funds which are received and held solely for the purpose of securing a liability to the Bank but not in an amount in excess of such liability" (12 U. S. C. A., § 1817(a)(2)(ii)). Petitioner concedes (p. 30) that the deduction here in issue is authorized by this amendment, but claims that respondent owes $2,442.52 for the years 1948, 1949 and 1950. This question also is plainly academic and of no present importance. It is not asserted that there is any pending litigation or any claim relating to this issue. Moreover, the Statute of Limitations would bar any such claims.

2. The court below properly held that these so-called "deposits" were not deposits in the "usual" sense and therefore did not form the basis for assessments. What the Bank received was uncollected paper or contracts, not "money or its equivalent," as provided in the Act. The customer could not withdraw the so-called deposit unless all the paper or contracts had been paid in full.

Conclusion.

All of the questions presented have become and are now purely academic by reason of amendments to the statute or the adoption of new regulations. There are no important questions of law involved, and the court below correctly decided all of the issues. We, therefore, respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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